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**Part I. Authority****16.04.010 Authority.**

A. The city adopts the ordinance codified in this chapter under the State Environmental

1. Prior legislation: Ords. 84-23 and 88-16.

Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

B. This chapter contains this city's SEPA procedures and policies.

C. The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 92-06 § 1, 1992)

## Part II. General Requirements

### 16.04.020 Purpose of this part and adoption by reference.

This part contains the basic requirements that apply to the SEPA process. The city adopts the following sections of Chapter 197-11 of the Washington Administrative Code (WAC) by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review – Reliance on existing plans, laws and regulations.
- 197-11-164 Planned actions – Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – Procedures.
- 197-11-172 Planned actions – Project review.

(Ord. 98-37 § 1, 1998; Ord. 92-06 § 1, 1992)

### 16.04.030 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

A. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

B. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

C. "City department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order. (Ord. 92-06 § 1, 1992)

### 16.04.040 Designation of responsible official.

A. For those proposals for which the city is the lead agency, the responsible official shall be the director of planning and community development or any other such person as the director may designate in writing.

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in BIMC 16.04.020.

C. The city shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW. (Ord. 92-06 § 1, 1992)

### 16.04.050 Lead agency determination and responsibilities.

A. If the city receives an application for or initiates a proposal that involves a nonexempt action, the city shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the city is aware that another agency is in the process of determining the lead agency.

B. When the city is not the lead agency for a proposal, the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The city shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required

under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

C. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 14 days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 14-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

D. The city is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any city department that will incur responsibilities as the result of such agreement approve the agreement.

E. The city, in making a lead agency determination for a private project, shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?). (Ord. 98-37 § 2, 1998; Ord. 92-06 § 1, 1992)

#### **16.04.053 Transfer of lead agency status to a state agency.**

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other

agencies with jurisdiction over the proposal. (Ord. 92-06 § 1, 1992)

#### **16.04.055 Additional considerations in time limits applicable to the SEPA process.**

Time estimates contained in this section (expressed in calendar days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies. The actual time may vary with the complexity of the project, availability of staff, cooperation of agencies with jurisdiction or expertise, etc. Time periods for making threshold determinations shall commence upon payment of fees.

A. Categorical Exemptions. The city will normally identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations. When the city is lead agency for a proposal, the following threshold determination timing requirements apply:

1. If a DS is made concurrent with the notice of application, the DS and scoping notice shall be combined with the notice of application (RCW 36.70B.110). Nothing in this subsection prevents the DS/scoping notice from being issued before the notice of application. If sufficient information is not available to make a threshold determination when the notice of application is issued, the DS may be issued later in the review process.

2. If the city is lead agency and project proponent or is funding a project, the city may conduct its review under SEPA and may allow appeals of procedural determinations prior to submitting a project permit application.

3. If an open record predecision hearing is required, the threshold determination shall be issued at least 15 days before the open record predecision hearing (RCW 36.70B.110 (6)(b)).

4. The optional DNS process in WAC 197-11-355 may be used to indicate on the notice of application that the lead agency is likely to issue a DNS. If this optional process is used, a separate comment period on the DNS may not be required (refer to WAC 197-11-

355(4)). (Ord. 98-37 § 3, 1998; Ord. 92-06 § 1, 1992)

**16.04.058 Additional timing considerations.**

A. If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications.

B. In addition to the environmental documents, an applicant shall submit the following information for early environmental review:

1. Site plan as required by the zoning code.
2. Other information as the responsible official may determine. (Ord. 92-06 § 1, 1992)

**Part III. Categorical Exemptions and Threshold Determinations**

**16.04.065 Purpose of this part and adoption by reference.**

This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for integrating SEPA environmental analysis with project review and for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of non-significance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.

197-11-360 Determination of significance (DS)/initiation of scoping.

197-11-390 Effect of threshold determination.

(Ord. 98-37 § 4, 1998; Ord. 92-06 § 1, 1992)

**16.04.070 Flexible thresholds for categorical exemptions.**

A. Categorical exemptions are adopted by reference under Section 16.04.180. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

1. For residential dwelling units in WAC 197-11-800 (1)(b)(i): four units.
2. For agricultural structures in WAC 197-11-800 (1)(b)(ii): 10,000 square feet.
3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iii): 4000 square feet and 20 parking spaces.
4. For parking lots in WAC 197-11-800 (1)(b)(iv): 20 parking spaces.
5. For landfills and excavations in WAC 197-11-800(1)(b)(v): 100 cubic yards.

B. The city shall send the new exempt levels established under this section to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800 (1)(c). (Ord. 92-06 § 1, 1992)

**16.04.080 Use of exemptions.**

A. Upon receiving an application for a license or, in the case of governmental proposals, initiating the proposal, the city shall determine whether the license and/or the proposal is exempt. The city's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the city shall make certain the proposal is properly defined and shall identify the governmental licenses required. WAC 197-11-060. If a proposal includes exempt and nonexempt actions, the city shall determine the lead agency, even if the license application that triggers the city's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:

- a. Any nonexempt action;
- b. Any action that would have an adverse environmental impact; or
- c. Any action that would limit the choice of alternatives.

2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

D. 1. Short subdivision of lands previously subdivided under an exemption from the SEPA rules shall not be exempt from environmental review.

2. Proposed short subdivision of land that is adjacent to previous short subdivisions or adjacent to land on which a subdivision is pending shall not be exempt if adjacent subdivisions share any improvements or access easements. In such cases, the proposed short plat will be considered physically or functionally related regardless of ownership. (Ord. 92-06 § 1, 1992)

#### **16.04.090 Environmental checklist.**

A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; provided, that a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the applicant shall complete the environmental checklist for that proposal.

C. The city may require that it or a consultant of the city's choosing, and not the private applicant, shall complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or

2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

Prior to the hiring of such consultant, the applicant, the city and the consultant shall enter into a three-party agreement under which the applicant pays the consultant directly for services rendered. (Ord. 92-06 § 1, 1992)

#### **16.04.100 Threshold determination (DNS, mitigated DNS, optional DNS and DS).**

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. Early Notice.

1. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

a. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the city is lead agency; and

b. Precede the city's actual threshold determination for the proposal.

2. The responsible official should respond to the request for early notice within 15 working days. The response shall:

a. Be written;

b. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and

c. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

D. When an applicant submits a changed or clarified proposal along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

E. A mitigated DNS is issued under WAC 197-11-340(2), requiring a 14-day comment period and public notice or issued under the optional DNS process, WAC 197-11-355.

F. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.

Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any issued license or permit.

G. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

#### H. Optional DNS Process.

1. When the responsible official has a reasonable basis for determining significant adverse environmental impacts are unlikely for a proposal, the city may use a single integrated comment period to obtain comments on the notice of application and the likely threshold determination for the proposal. If the process is used, an second comment period will typically not be required when the DNS is issued.

2. If the city uses the optional process, the responsible official shall comply with the requirements of WAC 179-11-355, combining the SEPA notice with the notice of application and providing on 14-day comment period for the application and SEPA determination.

I. The city's written response under subsection B of this section, Early Notice, shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 98-37 § 5, 1998; Ord. 92-06 § 1, 1992)

### Part IV. Environmental Impact Statement (EIS)

#### 16.04.110 Purpose of this part and adoption by reference.

This part contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

197-11-400 Purpose of EIS.

197-11-402 General requirements.

- 197-11-405 EIS types.
  - 197-11-406 EIS timing.
  - 197-11-408 Scoping.
  - 197-11-410 Expanded scoping.
  - 197-11-420 EIS preparation.
  - 197-11-425 Style and size.
  - 197-11-430 Format.
  - 197-11-435 Cover letter or memo.
  - 197-11-440 EIS contents.
  - 197-11-442 Contents of EIS on non-project proposals.
  - 197-11-443 EIS contents when prior non-project EIS.
  - 197-11-444 Elements of the environment.
  - 197-11-448 Relationship of EIS to other considerations.
  - 197-11-450 Cost-benefit analysis.
  - 197-11-455 Issuance of DEIS.
  - 197-11-460 Issuance of FEIS.
- (Ord. 92-06 § 1, 1992)

#### **16.04.120 Preparation of EIS – Additional considerations.**

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the city under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city

may request under another ordinance or statute.) (Ord. 92-06 § 1, 1992)

#### **16.04.125 Additional elements to be covered in an EIS.**

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

- A. Economy;
- B. Social policy analysis;
- C. Cost-benefit analysis;
- D. Such other elements as may be required by the responsible official. (Ord. 92-06 § 1, 1992)

### **Part V. Commenting**

#### **16.04.128 Adoption by reference.**

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

(Ord. 92-06 § 1, 1992)

#### **16.04.130 Public notice.**

A. Whenever the city issues a DNS under WAC 197-11-340(2) or 197-11-355, or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

1. When possible, public notice requirements under SEPA should be combined with notice requirements for an application. This notice shall state whether a DS or a DNS was issued and when all comments are due.

(For example, if the timing for notice requirements for a subdivision or construction project coincide with the timing requirements under SEPA, then the city shall combine information on the application notice and have one time frame for all comments.) The city will use whichever notice requirements are greater except when issuing a DNS under the optional DNS process, in which case the requirements of WAC 197-11-355 shall be met.

2. The city shall give notice of a DNS or DS by using all of the following means:

a. Posting the property for site-specific proposals or mailing to property owners within 300 feet of the proposal if the project is site-specific, or both, as determined by the responsible official. For posting, the applicant shall supply and erect an eight-square-foot notice board on all site-specific projects on all adjacent rights-of-way or in accordance with requirements set forth by the office of planning and community development; and

b. Publishing notice in the city's legal newspaper; and

c. Notifying public or private groups which have expressed interest in writing for a certain proposal or in the type of proposal being considered; and

d. Sending notice to agencies as directed by the responsible official (either general lists or lists for specific proposals for subject areas); and

e. Any other reasonable method calculated to inform the public and other agencies or required by statute or ordinance, as determined by the responsible official.

3. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

B. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license and all of the following methods:

1. Posting the property for site-specific proposals or mailing to property owners within 300 feet of the proposal, if the project is site-specific, or both, as determined by the responsible official. For posting, the applicant shall supply and erect an eight-square-foot notice board on all site-specific projects in accordance with requirements set forth by the office of planning and community development; and

2. Publishing notice in the city's legal newspaper; and

3. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered; and

4. Sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); and

5. Any other reasonable method calculated to inform the public and other agencies or required by statute or ordinance, as determined by the responsible official.

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.

D. Notice of public hearings shall be published no later than 15 days before the hearing. Notices shall be mailed to owners of property within 300 feet of the site and posted as described in this section.

E. The city shall require an applicant to complete the public notice requirements for the applicant's proposal at the applicant's expense, compensate the city for costs of carrying out the public notice requirements on behalf of the applicant, or provide services or materials to assist the city in carrying out the public notice requirements. (Ord. 98-37 § 6, 1998; Ord. 95-43 § 1, 1995; Ord. 92-06 § 1, 1992)

#### **16.04.140 Designation of official to perform consulted agency responsibilities for the city.**

A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation



request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate city departments. (Ord. 92-06 § 1, 1992)

## **Part VI. Using Existing Environmental Documents**

### **16.04.150 Purpose of this part and adoption by reference.**

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement – Procedures.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

(Ord. 92-06 § 1, 1992)

## **Part VII. SEPA and Agency Decisions**

### **16.04.155 Purpose of this part and adoption by reference.**

This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

(Ord. 92-06 § 1, 1992)

### **16.04.160 Substantive authority.**

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Bainbridge Island.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The conditions or mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that no reasonable mitigation measures are capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordi-

nate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural, and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following:

a. Bainbridge Island Municipal Code, including all other chapters contained in Title 16, Environment;

b. Bainbridge Island Subarea Land Use Plan dated December 18, 1989, and map;

c. Shoreline Management Act;

d. Water Quality Act;

e. Bainbridge Island Park and Recreation District Comprehensive Plan, 1990;

f. Bremerton-Kitsap County board of health regulations;

g. Growth Management Act;

h. Forest Practice Act and Regulations;

i. Kitsap County open space plan, April, 1987;

j. Kitsap County water and sewer plan;

k. Kitsap County comprehensive plan;

l. Kitsap County View Blockage Resolution #240-1984;

m. Kitsap County noise ordinance;

n. Kitsap County zoning ordinance as amended March, 1990;

o. Kitsap County shoreline master program, July 11, 1977;

p. Winslow Ordinance 90-17;

q. Kitsap regional critical area policies;

r. Kitsap County ground water management plan dated April, 1991. (Ord. 92-06 § 1, 1992)

#### 16.04.170 Appeals.

A. Any person may appeal the issuance of:

1. A determination of nonsignificance;

2. A determination of significance;

3. A final environmental impact statement; and

4. Any decision of a non-elected official which conditions or denies a proposal or action on the basis of SEPA, except for permits or variances issued pursuant to Chapter 16.12. No other SEPA appeal shall be allowed.

B. Except for an appeal of a determination of significance (DS), there shall be no more than one administrative SEPA appeal proceeding.

C. An appeal must be filed in writing with the responsible official within 14 calendar days from the date of the determination, or 21 calendar days from the date of the determination, when the determination is subject to a SEPA public comment period as required under WAC 197-11-340. The appeal shall identify the decision, contain a summary of the grounds for the appeal and be accompanied by an appeal fee in an amount established by resolution of the city council. Following receipt of the appeal and the fee, the responsible official shall transmit a copy of the appeal to the hearing examiner.

D. The appeal shall be heard by the hearing examiner at a public hearing, notice of which shall be published once and mailed to the appellant and delivered to the responsible

official at least 15 days before the public hearing.

E. At the public appeal hearing, the hearing examiner shall consider all relevant evidence and take testimony on oath. The public hearing shall be tape recorded. Upon completion of the public hearing, the hearing examiner shall enter findings of fact, conclusions of law and a decision, giving substantial weight to the decision of the responsible official.

F. The decision of the hearing examiner is final unless an appeal is filed with the superior court.

G. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. If there is no time period for appealing the underlying government action and a notice of action under RCW 43.21C.080 is used, appeal shall be commenced within the time period specified by RCW 43.21C.080. (Ord. 98-37 § 7, 1998; Ord. 95-43 § 2, 1995; Ord. 92-06 § 1, 1992)

#### **16.04.173 Notice/statute of limitations.**

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or county auditor, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 92-06 § 1, 1992)

### **Part VIII. Definitions**

#### **16.04.175 Purpose of this part and adoption by reference.**

This part contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by BIMC 16.04.040:

##### **WAC**

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.

- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-721 Closed record appeal.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of non-significance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- 197-11-742 Environmental checklist.
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- 197-11-748 Environmentally sensitive area.
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.
- 197-11-766 Mitigated DNS.
- 197-11-768 Mitigation.
- 197-11-770 Natural environment.
- 197-11-772 NEPA.
- 197-11-774 Non-project.
- 197-11-775 Open record hearing.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.

- 197-11-797 Threshold determination.
  - 197-11-799 Underlying governmental action.
- (Ord. 98-37 § 8, 1998; Ord. 92-06 § 1, 1992)

### Part IX. Categorical Exemptions

#### 16.04.180 Adoption by reference.

The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter, including BIMC 16.04.070 (Flexible thresholds), BIMC 16.04.080 (Use of exemptions), and BIMC 16.04.190 (Critical areas):

##### WAC

- 197-11-800 Categorical exemptions.
  - 197-11-880 Emergencies.
  - 197-11-890 Petitioning DOE to change exemptions.
- (Ord. 98-20 § 13, 1998; Ord. 92-06 § 1, 1992)

### Part X. Agency Compliance

#### 16.04.185 Purpose of this part and adoption by reference.

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference, as supplemented by BIMC 16.04.050 through 16.04.053 and this part:

##### WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.

- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

- 197-11-938 Lead agencies for specific proposals.

- 197-11-940 Transfer of lead agency status to a state agency.

- 197-11-942 Agreements on lead agency status.

- 197-11-944 Agreements on division of lead agency duties.

- 197-11-946 DOE resolution of lead agency disputes.

- 197-11-948 Assumption of lead agency status.

(Ord. 98-20 § 13, 1998; Ord. 92-06 § 1, 1992)

#### 16.04.190 Critical areas.

A. The responsible official shall designate critical areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the city clerk and the Department of Ecology, Headquarters Office, Olympia, Washington. The critical area designations shall have full force and effect of law as of the date of filing.

B. The city shall treat proposals located wholly or partially within a critical area as other nonexempt proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in a critical area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. (Ord. 98-20 § 13, 1998; Ord. 92-06 § 1, 1992)

**16.04.200 Fees.**

The city shall require the following fees for its activities in accordance with the provisions of this chapter:

A. **Threshold Determination.** For every environmental checklist the city will review when it is lead agency, the city shall collect a fee as established by resolution of the city council from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee. When the city completes the environmental checklist at the applicant's request or under BIMC 16.04.090.C, an additional cost plus a percent as established by resolution of the city council shall be collected.

B. **Environmental Impact Statement.**

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city will charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

2. The responsible official may determine that the city will contract directly with a consultant of the city's choice for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant.

3. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivision 1 or 2 of this subsection which remain after incurred costs are paid.

C. The city will collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

D. The city shall not collect a fee for performing its duties as a consulted agency.

E. The city will charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW. (Ord. 92-06 § 1, 1992)

**Part XI. Forms****16.04.205 Adoption by reference.**

The city adopts the following forms and sections by reference:

WAC

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of non-significance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

(Ord. 92-06 § 1, 1992)

